

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Jointly Administered under
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

(includes:

Petters Group Worldwide, LLC;

PC Funding, LLC;

Thousand Lakes, LLC;

SPF Funding, LLC;

PL Ltd., Inc.;

Edge One LLC;

MGC Finance, Inc.;

PAC Funding, LLC;

Palm Beach Finance Holdings, Inc.)

Court Files Nos.:

08-45258 (GFK)

08-45326 (GFK)

08-45327 (GFK)

08-45328 (GFK)

08-45329 (GFK)

08-45330 (GFK)

08-45331 (GFK)

08-45371 (GFK)

08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

**NOTICE OF HEARING AND MOTION FOR AN ORDER AUTHORIZING AND
APPROVING CASE MANAGEMENT PROCEDURES
GOVERNING MULTIPLE ADVERSARY PROCEEDINGS
ARISING UNDER 11 U.S.C. §§ 105, 502, 506, 510, 542, 544, 547, 548 AND 550**

TO: The entities specified in Local Rule 9013-3.

1. Douglas A. Kelley, the duly-appointed Chapter 11 Trustee (the “Trustee”) of the above-captioned debtors (the “Debtors”), by and through his undersigned counsel, hereby moves this Court for the relief requested and gives notice of hearing.

2. The Court will hold a hearing on this Motion before Gregory F. Kishel, United States Bankruptcy Judge, at 1:30 p.m. on January 18, 2011, or as soon thereafter as the parties may be heard, in Courtroom 2A, at the United States Courthouse, 316 N. Robert Street, St. Paul, Minnesota.

3. Any response to this Motion must be filed and served by delivery or by mail not later than January 13, 2011, which is five (5) days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. Voluntary petitions commencing the Chapter 11 cases of Petters Company, Inc. (“PCI”) and Petters Group Worldwide, LLC (“PGW”) were filed on October 11, 2008. Petitions commencing the Chapter 11 cases of PC Funding, LLC, Thousand Lakes, LLC, SPF Funding, LLC, PL Ltd., Inc., Edge One, LLC and MGC Finance, Inc. were filed on October 15, 2008. The petition commencing the Chapter 11 case of PAC Funding, LLC was filed on October 17, 2008. The petition commencing the Chapter 11 case of Palm Beach Finance Holdings, Inc. was filed on October 19, 2008 (collectively, the “Petitions,” the “Petition Dates,” the “Petters Cases” and the “Petters Estates”). Venue of the Petters Cases and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The Petters Cases are now pending before this Court.

5. On December 24, 2008, the United States Trustee appointed Douglas A. Kelley as Trustee in these cases. On February 26, 2009, this Court approved that appointment. An official committee of unsecured creditors (the “Creditors’ Committee”) has been appointed in these cases pursuant to § 1102 of the Bankruptcy Code.

6. This Motion arises under 11 U.S.C. § 105 and Federal Rules of Bankruptcy Procedure 7004(m), 7016, 7026 and 9006. This Motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 2002-1, 7004-2, 9006-1, 9013-1 through 3.

FACTUAL BACKGROUND

I. Events Leading Up to Bankruptcy Filings

7. PCI is a Minnesota corporation, the shares of which are 100% owned and, prior to October 6, 2008, were 100% controlled by Thomas J. Petters (“Petters”). PCI, in turn, is the sole member or shareholder, as applicable, and owns 100% of the membership interests or shares, as applicable, of PC Funding, Thousand Lakes, SPF Funding, PL Ltd., Edge One, MGC Finance, and PAC Funding (the “PCI Estates”). Palm Beach Finance Holdings is wholly-owned by Petters. The operational and managerial decisions of PCI and its affiliates were principally made by Petters and his Co-conspirators (as that term is defined below). PCI obtained capital for the Petters enterprises, on its own account and also utilizing single purpose entities to obtain billions of dollars of funding, purportedly to acquire merchandise for sale to wholesalers and retailers nationwide. In almost all instances, however, the purchase and sale business did not exist.

8. PGW is a privately held Delaware limited liability company that was also 100% owned and, prior to October 6, 2008, was 100% controlled by Petters. The operational and managerial decisions of PGW and its subsidiary entities were also made by Petters and his Co-conspirators. PGW was a holding company that provided certain accounting, legal and human resource services to Petters’ business entities, but had no independent operations. PGW obtained funds mostly from PCI that PCI obtained as part of a scheme to defraud investors, as well as from investors whose funds were used to further the fraudulent scheme.

9. On September 24, 2008, the Federal Bureau of Investigation, together with the Internal Revenue Service – Criminal Investigation Division and the United States Postal Inspection Service executed search warrants on multiple locations and seized records of PCI, PGW and other subsidiary entities, including the Debtors, as well as sole owner Petters, his Co-conspirators and other employees and persons involved in a scheme to defraud and obtain

billions of dollars of money and property by means of materially false and fabricated pretenses, representations and promises (the “Ponzi Scheme”).

10. On October 3, 2008, Petters was arrested on charges of mail and wire fraud, money laundering, and conspiracy. Other executives implicated in this scheme have also been arrested on various charges and have pleaded guilty to certain crimes as a result of their involvement in the Ponzi Scheme.

11. On December 1, 2008, a United States Grand Jury returned an indictment against PCI and PGW for their respective criminal conduct in furthering a \$3.5 billion fraud.

12. Petters and his Co-conspirators operated the Ponzi Scheme with the assistance of other individuals within the Petters organizations from approximately 1993 through the date of his arrest by federal agents on October 3, 2008. Petters, through PCI, PGW and various other entities that he controlled, laundered what is estimated to be an amount in excess of \$40 billion.

13. Petters, through a multitude of entities and with the assistance of his Co-conspirators, induced investors into financing the purchase of non-existent electronic equipment purportedly secured by fabricated purchase orders. Over many years, Petters and his Co-conspirators caused investors to believe that their investments to purchase consumer electronic goods from wholesalers were to be resold to large, “big box” retailers such as Costco, Sam’s Club and B.J.’s Wholesale Club. Petters and his Co-conspirators, however, intentionally fabricated documents to recruit investors into the Ponzi Scheme and cause existing investors to continue to invest in the Ponzi Scheme. Petters and his Co-conspirators prepared and utilized fabricated documents that were represented to investors to be equipment purchase orders and related documents. The purchase orders and the related documents were in most cases entirely fictitious and the inventory—electronic goods or other items—never actually existed. The result was that investors were not repaid with the earnings from their investments, but with funds

Petters and his Co-conspirators obtained from other investors—in other words, Petters was “robbing Peter to pay Paul.” Indeed, Petters, through PCI and PGW and a multitude of shell companies, intended that the payments to early investors would induce ongoing, repeated, greater and more widespread investment in the Ponzi Scheme and thereby further perpetrate and extend the life of the fraud.

14. Petters and the businesses he controlled had increasing difficulties in raising sufficient capital to cover outstanding investments and provide working capital for operating needs. As a result of numerous defaults with investors, Petters, operating through PCI, PGW and other entities, was forced to enter into numerous agreements, including a series of pledges, guaranties, security agreements, forbearance and other agreements with various investors and entered into numerous other transactions in order to prop up failing businesses, obtain new funding, avoid the discovery of the fraud, halt investigations, appease large investor groups who had the leverage to extract value, and perpetuate the Ponzi Scheme.

15. On October 2, 2008, the United States, in support of a criminal investigation, sought an asset freeze and receivership under the Anti-Fraud Injunction Act, 18 U.S.C. § 1345, in the United States District Court for the District of Minnesota, captioned *United States v. Thomas Joseph Petters, et al.*, Civil Case No. 08-05348 ADM/JSM (the “Civil Fraud Case”). This receivership proceeding was for the benefit of victims of the massive fraud that took place at PGW and PCI. The Honorable Ann D. Montgomery was assigned the receivership case. On October 6, 2008, Judge Montgomery issued an Order for Entry of Preliminary Injunction, Order Appointing Receiver and Other Equitable Relief, [Dkt. No. 12], as subsequently amended on October 14, 2008 [Dkt. No. 43], October 22, 2008 [Dkt. No. 70] and December 8, 2008 [Dkt. No. 127] (collectively, the “Receivership Order”). Judge Montgomery appointed Douglas A. Kelley as Receiver (the “Receiver”) for Petters, PCI and PGW, as well as certain entities owned

and controlled 100% by such entities. Pursuant to the Receivership Order, the Receiver is to “conserve, hold and manage all receivership assets ... in order to prevent any irreparable loss, damage or injury to consumers or creditors of the Entities [under the receivership].” Receivership Order, p. 11, ¶ IV(B)(4). Judge Montgomery, through the Receivership Order, specifically granted the Receiver authority to file “any bankruptcy petitions for any of the [Debtors] to protect and preserve the assets of any of the [Debtors].” *See* Second Amended Order of Preliminary Injunction, Appointment of Receiver and Other Equitable Relief, Sect. IV, paragraph (B)(2)(c) [Dkt. No. 127].

16. As a result of the investigation, subsequent arrests and litigation by numerous claimants, the Receiver sought relief for the Debtors under Chapter 11 of the Bankruptcy Code in order to preserve assets and potential claims held by these estates pursuant to the Bankruptcy Code and other applicable law.

II. Events Since the Bankruptcy Filing

17. On December 1, 2008, and through the Superseding Indictment entered June 3, 2009, Petters, PCI and PGW were indicted by a federal grand jury and charged on 15 counts of (i) mail fraud, (ii) wire fraud, (iii) conspiracy to commit mail fraud and wire fraud, and (iv) conspiracy to commit money laundering, in violation of 18 U.S.C. §§ 371, 1343, 1956 and 1957. *See* Indictment, Dkt. No. 75, and Superseding Indictment, Dkt. No. 196, *United States of America v. Petters et al.*, Case No. 08-cr-00364 (RHK-AJB) (D. Minn.) (the “Criminal Fraud Case”). Petters was also indicted on 5 counts of engaging in money laundering in violation of 18 U.S.C. § 1957. *Id.* The Honorable Richard H. Kyle was assigned the case. The Indictment alleged that Petters and the Individual Defendants used PCI and PGW, as well as their subsidiary entities, to orchestrate a massive Ponzi scheme that spanned over a decade and defrauded investors out of more than \$3.5 billion.

18. At various times during the course of the Ponzi Scheme, Petters was assisted in the operation of the scheme by numerous individuals and conspirators, including Deanna Coleman (“Coleman”), Robert White (“White”), Larry Reynolds (“Reynolds”), Michael Catain (“Catain”), and James Wehmhoff (“Wehmhoff”) (collectively referred to herein as “Co-conspirators”). Coleman has pleaded guilty to a single count of conspiracy to commit mail fraud. On September 2, 2010, Judge Richard H. Kyle sentenced Coleman to one year and a day in prison for her involvement in the fraud. White has pleaded guilty to a single count of mail fraud and has been sentenced to 5 years in prison for his crimes. Reynolds and Catain have each pleaded guilty to a single count of conspiracy to commit money laundering. Reynolds has been recently sentenced to nearly 11 years in prison for his role in the Ponzi scheme. Catain has been sentenced to 7.5 years. Wehmhoff has pleaded guilty to conspiracy to defraud the United States, conspiracy to commit tax evasion and one count of aiding and assisting in the filing of a false tax return and has recently been sentenced.

19. PCI and PGW have also entered guilty pleas to charges of mail fraud, conspiracy to commit mail fraud and wire fraud and conspiracy to commit money laundering and have been sentenced.

20. On December 2, 2009, a jury in the United States District Court of the District of Minnesota found Petters guilty of all 20 counts charged in the Superseding Indictment. On April 8, 2010, Petters was sentenced to 50 years in prison for his crimes. Pursuant to the Court’s *Preliminary Order of Forfeiture*, Case No. 08-cr-00364, Doc. No. 395, certain property, including real property, proceeds from the sale of real property and accounts were forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). *Id.* at ¶¶1 & 2. A money judgment was also entered against Petters in the amount of \$3,522,880,614.10 in favor of the United States. *Id.* at ¶3.

III. The Adversary Proceedings

21. The Trustee has engaged PricewaterhouseCoopers LLP (“PwC”) to perform various forensic accounting and related services in connection with the massive fraud and Ponzi Scheme that was designed and orchestrated principally by Petters and the business organizations that he controlled, including PCI and PGW. PwC’s services include the performance of investigative work involving the flow of funds to, from and between the various Petters-related entities. The Trustee, PwC and other professionals have reviewed payments and other transfers made by the Debtors to third parties prior to the commencement of the Petters Cases and other transactions entered into and obligations incurred by the Debtors. Based upon this investigation, the Trustee has identified fraudulent transfer, preferential transfer and other claims against numerous persons or entities.

22. Between September 10, 2010 and October 11, 2010, the Trustee timely commenced over 200 adversary proceedings against approximately 382 defendants in this Court (the “Pending Adversary Proceedings”) seeking, among other things, the avoidance and recovery of false profits, preferences and other sums transferred by the Debtors prior to the bankruptcy filings so that the funds can be equitably redistributed to creditors. The Pending Adversary Proceedings are more completely identified on Exhibit A. In the Pending Adversary Proceedings, the Trustee seeks to recover significant sums in connection with transfers made by the Debtors, including “false profits” and transfers for no or inadequate consideration in the approximate amount of \$1 billion. Approximately 112 of the Pending Adversary Proceedings involve an aggregate monetary claim for recovery of \$1 million or less. The Trustee anticipates commencing additional adversary proceedings in the future against additional immediate or mediate transferees of initial transferees and other parties (all such additional adversary proceedings, together with the Pending Adversary Proceedings, are collectively referred to

herein as the “Adversary Proceedings”). The Adversary Proceedings arise out of the Petters Ponzi Scheme and, for the most part, a common nucleus of operative facts. The proceedings will present many common issues of law and fact which will require coordination and resolution by this Court. The Trustee’s goal is to resolve each of these Adversary Proceedings as efficiently as possible and provide for a just and speedy resolution and a maximum return to creditors holding allowed claims against the bankruptcy estates. Accordingly, the Trustee seeks the entry of an order from this Court adopting and approving the procedures identified below substantially in the form submitted in connection with this motion (the “Procedures Order”).

23. The Petters Ponzi Scheme is one of the largest fraudulent investment schemes in the history of the United States. It is widely recognized that Ponzi schemes necessarily give rise to extensive avoidance powers. The premise underlying all avoidance litigation, namely advancing the Bankruptcy Code’s goal of equality of distribution, has a particularly pronounced meaning in the context of a Ponzi scheme. While one can readily say that most creditors are victims in a Ponzi scheme, the economic loss attributable to the fraudulent scheme often falls disproportionately on some—particularly those that have not been repaid. The Bankruptcy Code’s fraudulent and preferential transfer provisions permit, among other things, a trustee to set aside and recover payments or other transfers made to or for the benefit of a creditor that increase its recovery ahead of recovery by other, similarly situated creditors. The law upon which the Trustee relies and forms the basis for the Adversary Proceedings represents an equitable determination by Congress that creditors must be treated equally in cases of insolvency or fraud. The operative statutes therefore permit recovery against even a perfectly innocent creditor that was legally entitled to be repaid.

RELIEF REQUESTED

24. In order to facilitate the orderly administration of such a large number of adversary proceedings, the Trustee submits that it is appropriate to establish procedural guidelines to govern the litigation of the Adversary Proceedings. The Trustee therefore proposes that the Court implement the procedures set forth herein (as set forth below, the “Procedures”). The Trustee believes that the proposed Procedures will serve judicial economy, speed the time within which the Adversary Proceedings will be resolved and potentially avoid unnecessary litigation costs for the parties by providing a mechanism for consolidating common issues of law and fact, establishing a stream-lined process for resolving disputes, modifying, and in some cases eliminating, the need for this Court’s individualized review of every case management issue that arises. In general, the Procedures: (a) establish omnibus status conferences and pretrial hearings to enable the parties and the Court to promptly and efficiently address issues relating to the administration of the Adversary Proceedings; (b) establish dates for filing certain motions and a process for identifying common questions of law and fact; (c) coordinate the efficient resolution of common legal and factual issues in multiple Adversary Proceedings; (d) maximize the potential for settlement before trial either through negotiation or through mediation; (e) establish an initial framework for expediting the resolution of the multiple Adversary Proceedings in a fair and efficient manner; and (f) aid overall efficiency, promote uniformity and minimize the burden on the Court.

The Procedures

25. The Trustee requests the entry of an order authorizing and adopting the following Procedures for the Adversary Proceedings:

A. Applicability of the Procedures and the Procedures Order:

- (i) *General Applicability.* The Procedures and the Procedures Order shall apply to all of the Adversary Proceedings, except as otherwise provided herein.
- (ii) *Later-Served Defendants.* In the event the Trustee serves a defendant in an Adversary Proceeding with a summons and a complaint less than fourteen (14) days prior to the hearing on the Motion seeking the entry of the Procedures Order or at any time after the entry of the Procedures Order (such defendant being referred to herein as the “Later-Served Defendant”), such Later-Served Defendant may object to being subject to the provisions of the Procedures by filing and serving a written objection within fourteen (14) days from the date the Procedures Motion or the Procedures Order, as the case may be, is served upon such Later-Served Defendant. Upon receipt of a timely objection, the Court shall hear such objection at a regularly scheduled Omnibus Hearing Date (as defined below) and determine whether and to what extent the Procedures Order shall apply to such defendant.

B. Extension of Rule 7004(m) Period:

- (i) *Extension of Service Deadlines for the Summons and Complaint.* The 120-day time period provided in Rule 7004(m) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for the Trustee to serve the summons and complaint in the Adversary Proceedings on all defendants is and shall be extended by 120 days. The extension is without prejudice to the Trustee to seek further extensions of time for cause shown.

C. Answer Deadline and Extensions:

- (i) *Answer Deadline.* Pursuant to the Court’s Scheduling Order dated September 22, 2010, unless otherwise extended as hereinafter provided, the defendants in the Pending Adversary Proceedings shall file an answer or other responsive pleading to the complaints filed by the Trustee in connection with the Pending Adversary Proceedings the later of (a) **January 28, 2011**, or (b) the answer date specified in the summons served on a particular defendant.
- (ii) *Extensions.* The Trustee shall have the authority to extend the time to file an answer or other responsive pleading to a complaint filed in connection

with the Adversary Proceedings. The parties shall be permitted to enter into informal, written extension agreements or stipulations to extend the time to respond to the complaint in an Adversary Proceeding without the necessity of filing those agreements or stipulations with the Court.

D. Mediation:

- (i) *Thresholds.* All of the Adversary Proceedings in which (a) the Trustee seeks an aggregate monetary recovery of \$1,000,000 or less, or (b) the parties otherwise agree in writing to submit to mediation, shall be referred to mandatory mediation (collectively, the “Mediation Cases”).
- (ii) *Location.* Since the Adversary Proceedings are proceedings before this Court, Minnesota is the proper forum for mediation.
- (iii) *Mediators.* The mediations shall be conducted by bankruptcy judges designated by the Court unless the defendant(s) in the Pending Adversary Proceeding (a) agree(s) to pay the fees and costs of a private mediator identified in accordance with this provision, and (b) by no later than **February 18, 2011**, notify(s) counsel for the Trustee in writing of its election to proceed with private mediation and identifies a private mediator from the list of proposed mediators submitted in connection with the Procedures Motion as Exhibit B (the “Private Mediator List”). By mutual agreement, the Trustee and the defendant may select a mediator not on the Private Mediator List.
- (iv) *Mediation Request Notice.* The Trustee shall file a “Notice of Mediation and Request for Referral” (the “Mediation Request Notice”) in each Adversary Proceeding designated by the Trustee as a Mediation Case where the defendant does not elect to proceed with private mediation in accordance with the provisions of the previous paragraph of this Section D, requesting the Court to promptly refer the Mediation Case to another bankruptcy judge to serve as mediator; provided, however, that (a) the Mediation Request Notice shall not be filed by the Trustee before **February 18, 2011**, and (b) unless the parties agree otherwise, the Mediation Request Notice shall not be filed by the Trustee with respect to a defendant in any Mediation Case where such defendant has brought a Motion to Dismiss (as defined below) until after the Court issues its ruling in connection with such motion.
- (v) *Scheduling.* The Trustee, working with the mediator’s calendar clerk or office, will commence scheduling mediations based upon the availability of the mediator and the parties shall cooperate with each other regarding the scheduling of mediations.
- (vi) *Required Disclosures.* Within the later of sixty (60) days of (a) the filing of an answer or other responsive pleading to the complaint, or (b) the entry of the Procedures Order (the latter of such date being referred to herein as

the “Required Disclosure Date”), the parties in the Mediation Cases shall, unless otherwise agreed, deliver to the other parties the following required disclosures (the “Required Disclosures”): (1) copies of all agreements by, between and/or among any of the Debtors and/or Thomas Petters and the defendant(s); (2) copies of all correspondence, including electronic communications, by, between and/or among the Debtors, Thomas J. Petters, and/or the Co-conspirators and the defendant(s); and (3) copies of all documents reflecting investment/loan payment information relating to the transfers and transactions that are the subject to the Adversary Proceeding, including bank statements, cancelled checks, wire information, tax returns, investment account statements, including any analyses of such investment/loan and payment information. In the case of any defendant asserting or intending to assert an inability to pay or satisfy a judgment, in whole or in part, or other particularized financial hardship in connection with his, her or its position in the Mediation, the Required Disclosures delivered by such party on the Required Disclosure Date shall also include a requirement to complete and provide the information set forth in the Financial Disclosure Form attached to the Procedures Motion as Exhibit C (the “Financial Disclosure Form”), the particularities of which Financial Disclosure Form the Trustee shall treat as confidential. The Trustee shall be authorized to enter into a confidentiality agreement with a defendant upon reasonable request in order to preserve the confidentiality of personal financial information set forth in the Financial Disclosure Form.

- (vii) *Participation in Mediation.* The parties to the Mediation Cases shall participate in mediation as scheduled and presided over by the mediator in good faith and with a view toward reaching a consensual resolution. Each mediation shall be attended in person by a representative for each of the parties with full settlement authority and, if a defendant is represented, their legal counsel, as well as counsel for the Trustee (who shall have settlement authority).
- (viii) *Mediator’s Directives.* The mediator, in a separate order, notice or other communication that need not be filed, may require the parties to provide to the mediator any relevant papers and exhibits, a statement of position, and a settlement proposal. In the mediator’s discretion, upon notice (which need not be filed), the mediator may adjourn a mediation. The mediator may also continue a mediation that has been commenced if the mediator determines that a continuation is in the best interests of the parties.
- (ix) *Failure to Comply.* Upon notice and a hearing, a party’s failure to appear at the mediation or otherwise comply with the Procedures Order with respect to mediation in good faith, may result in the imposition by the Court of sanctions, which may include the entry of judgment in favor of the Trustee and the award of costs and attorneys’ fees.

- (x) *Confidential Settlement Communications.* Pursuant to Federal Rule 408 of the Federal Rules of Evidence, all settlement discussions and communications by, between and among the parties in connection with the mediation shall be confidential and inadmissible.
- (xi) *Report on Mediation.* If an Adversary Proceeding settles or fails to settle at the conclusion of mediation, then the Trustee shall so advise the Court at the next regularly scheduled Omnibus Hearing.

E. Motions to Dismiss:

- (i) *Deadlines for Motions to Dismiss.* Any defendant in an Adversary Proceeding seeking to bring a motion to dismiss pursuant to Rule 7009 or 7012 of the Bankruptcy Rules or otherwise ("Motion to Dismiss") shall file such motion on or before the later of (a) **January 28, 2011**, or (b) the answer date specified in the summons served on a particular defendant.
- (ii) *Scheduling Hearing on and Responses to Motions to Dismiss.* No hearings shall be scheduled on any Motion to Dismiss pending further order of the Court issued in connection with Trustee's Consolidation Motion described in Section F below. The Court will set a date and time for hearing on the Motion to Dismiss in the Pending Adversary Proceedings at the next regularly scheduled Omnibus Pretrial Hearing on March __, 2011 (date to be selected and announced by the Court) and will address a briefing schedule with respect to responses to such motions, set additional deadlines and other matters relating to the Motions to Dismiss at such hearing.

F. Coordination and Consolidation of Common Issues of Law and Fact:

- (i) *Common Issues Coordination.* The Trustee intends to request that the Court consolidate various matters and proceedings for hearing and presentation for decision in the Adversary Proceedings on common questions of law or fact pursuant to Rule 7042 of the Bankruptcy Rules. In connection therewith, the Trustee intends to seek an expedited discovery schedule on certain matters and request the entry of additional orders to make the litigation of the Adversary Proceedings more efficient and to avoid unnecessary duplication, costs and delay. Counsel for defendants interested in participating in the process of identifying common issues with counsel for the Trustee in connection with the Pending Adversary Proceedings shall communicate that desire to the undersigned counsel for the Trustee on or before **February 4, 2011** and in writing identify (a) their clients, and (b) issues of law and fact they believe to be appropriate to consolidate for hearing and any other matters appropriate for coordination. Counsel for the Trustee shall confer with defendants that have communicated an interest in the coordination of such issues in accordance with the foregoing and discuss common issues and procedures relating to consolidation.

- (ii) *Consolidation Motions.* On or before **March 2, 2011**, the Trustee shall file a motion with the Court seeking to consolidate for hearing and presentation for decision actions involving one or more common questions of law or fact pursuant to Rule 7042 of the Bankruptcy Rules (the “Consolidation Motion”). In connection therewith, the Trustee shall identify common questions for consolidation and propose an expedited discovery schedule(s) on appropriate matters, deadlines, the further coordination and scope of discovery in multiple Pending Adversary Proceedings, additional procedures, and other matters necessary or appropriate to the efficient and orderly administration of the consolidated actions or proceedings. The Court will hold a hearing on the Consolidation Motion at the next regularly scheduled Omnibus Pretrial Hearing on March __, 2011 (date to be selected and announced by the Court).
- (iii) *Consolidated Case Filings.* The Consolidation Motion and any responses thereto shall be filed in the main bankruptcy case (*In re Petters Company, Inc., et al.*, BKY Case No. 08-45257), and not in each separately docketed Adversary Proceeding, and shall be captioned accordingly.

G. Discovery Matters:

- (i) *Applicability of Rules.* The discovery provisions of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Minnesota Local Bankruptcy Rules (the “Local Rules”) shall govern the discovery to be conducted in the Adversary Proceedings, unless otherwise provided herein or in further order of the Court.
- (ii) *Waiver of Certain Requirements.* The provisions of Rule 26(a)(1), 26(a)(2), 26(a)(3) and 26(f) of the Federal Rules of Civil Procedure, as made applicable to the Adversary Proceedings pursuant to Rule 7026 of the Bankruptcy Rules, shall not apply to the Adversary Proceedings.
- (iii) *Discovery.* Discovery on certain matters relating to common questions of law and fact shall be identified or proposed in connection with the Consolidation Motion and addressed by the Court pursuant to separate order. Pending further order of the Court, the conduct of any and all discovery procedures in the Adversary Proceedings shall be stayed; provided, however, that the Trustee may immediately take any discovery that the Trustee deems necessary or desirable to effectuate service of process on any defendant to the Adversary Proceedings.
- (iv) *Documents in Criminal Proceedings.* The Trustee shall not, in connection with discovery in any Adversary Proceeding, be required to produce the transcripts of the criminal proceedings (or transcripts of hearings ancillary to such criminal proceedings) commenced by the United States against Thomas J. Petters, Deanna Coleman, Robert White, Larry Reynolds,

Michael Catain, James Wehmhoff, Greg Bell, PCI and PGW or related documents and exhibits in connection with discovery requests issued by any party in connection with the Adversary Proceedings. Defendants and other parties are directed to the following resource in order to request a copy of those transcripts, documents and exhibits:

Carla R. Bebault, RPR, FCRR
146 Federal Building
316 North Robert Street
Saint Paul, Minnesota 55101
(651) 848-1220
carla_bebault@mnd.uscourts.gov

H. Omnibus Pretrial Hearings:

- (i) *Omnibus Pretrial Hearings.* All non-dispositive matters and motions to request the approval of a settlement agreement requiring a hearing in connection with the Adversary Proceedings prior to trial shall be heard by the Court only on scheduled Omnibus Pretrial Hearing Dates established by the Court from time to time (each hearing referred to as an “Omnibus Pretrial Hearing” and the scheduled date for such hearing referred to as the “Omnibus Pretrial Hearing Date”), unless otherwise set forth herein or the Court orders otherwise on a particularized showing of good cause. The initial Omnibus Pretrial Hearing Dates shall be held on at ___ a.m. on March __, 2011, April __, 2011, May __, 2011 and June __, 2011. Thereafter, the Omnibus Pretrial Hearings shall be scheduled approximately every thirty (30) days at the convenience of the Court. The Trustee shall file and serve notices of the scheduling of the Omnibus Pretrial Hearings in the Adversary Proceedings.
- (ii) *Appearances at Omnibus Pretrial Hearings.* Defendants in each of the Adversary Proceedings are not required to appear at the Omnibus Pretrial Hearings unless (a) such defendants have requested relief from the Court that will be heard at the scheduled Omnibus Pretrial Hearing; (b) the Trustee has requested relief against such defendants from the Court that will be heard at the scheduled Omnibus Pretrial Hearing and such defendants intend to contest that relief; or (c) the Court has directed the defendant to appear.

I. Default Judgments:

- (i) *Applications for Default Judgments.* If a defendant in an Adversary Proceeding fails to timely interpose a response to the complaint by the deadline to answer or respond (and thus has defaulted), the Trustee shall be entitled to promptly seek the entry of default judgment by application pursuant to Local Rule 7055-1 served on the defaulting party on at least fourteen (14) days notice and final judgment shall be entered pursuant to Rule 7054 of the Bankruptcy Rules.

- (ii) *Certain Papers Not Required.* The Trustee need not file or serve a motion for default judgment and need not file or serve a memorandum of law.
- (iii) *Hearings on Defaults.* All hearings on the default applications shall be heard at the Omnibus Pretrial Hearings, except as otherwise provided herein.

J. Pre-Trial Jurisdictional Matters:

- (i) *Retention of Jurisdiction and Authority over Adversary Proceedings.* Consistent with this Court's rulings and pronouncements in *Kelley v. Hofer et al. (In re Petters Company, Inc.)*, ADV. No. 10-04221 (November 15, 2010) and *Hedback v. American Family Mut. Ins. Co. (In re Mathews)*, 203 B.R. 152 (Bankr. D. Minn. 1996), this Court shall retain the jurisdiction and the authority to preside over all Adversary Proceedings and to adjudicate all pre-trial matters, including the presentation of all dispositive motions and issuance of decisions on them.

K. Miscellaneous:

- (i) *Conflicts.* These Procedures shall control with respect to the Adversary Proceedings to the extent of any conflict with other applicable rules or orders entered prior to the date hereof.
- (ii) *Extensions of Deadlines.* The deadlines and other provisions contained in the Procedures Order may be extended or modified by the Court upon written motion and for good cause shown or consent of the parties pursuant to written agreement or stipulation, which agreement or stipulation need not be filed with the Court.
- (iii) *Notices of Appearance.* Consistent with the Scheduling Order entered by the Court on September 22, 2010, all attorneys retained by any defendant in an Adversary Proceeding in these bankruptcy cases shall file a notice of appearance on behalf of their client in the file for the Chapter 11 cases and, if the attorney does not timely file an answer, in the file for the Adversary Proceeding as well.
- (iv) *Electronic Service.* Any motions, notices or other pleadings filed or served by the Trustee in the Adversary Proceedings (other than the summons and complaint) may be served by e-mail (unless the defendant is an individual and is not represented by legal counsel in which event service by e-mail shall not be effective unless such defendant has consented to service by e-mail). Service by e-mail shall be effective as of the date such e-mail is sent to the e-mail address furnished by the defendants in connection with the Adversary Proceedings or the bankruptcy cases to the Court or counsel for the Trustee.

- (v) *Relief from Procedures.* Nothing herein shall prevent the Trustee or any defendant in an Adversary Proceeding from seeking relief from the provisions of these Procedures, upon a showing of good cause, by appropriate motion to the Court in accordance with the procedures set forth herein.
- (vi) *Exchange of Documents and Information.* Nothing herein shall prevent the parties to any Adversary Proceeding from voluntarily exchanging information or engaging in settlement discussions at any time; provided, however, that any voluntary exchange of information shall in no way be construed as a waiver of any of the requirements or limitations contained in these Procedures.
- (vii) *Construction.* The Procedures set forth in the Procedures Order shall be construed by the parties in a manner that promotes the expeditious and economical resolution of the Adversary Proceedings and administration of these bankruptcy cases.
- (viii) *Service of Procedures Order.* The Trustee shall serve a copy of the Procedures Order approving these Procedures on each defendant in the Adversary Proceedings; provided, however, that the Trustee shall not be required to serve the Procedures Order on legal counsel for any parties that have filed a notice of appearance in these Chapter 11 bankruptcy cases or the Adversary Proceedings prior to the entry of the Procedures Order.

#

Best Interests of the Bankruptcy Estates

26. The Trustee seeks to establish administrative and procedural safeguards in order to administer the Adversary Proceedings at the least possible expense and in the most efficient manner. The Trustee submits that the proposed Procedures will protect the due process rights of all parties in interest to the Adversary Proceedings and are appropriate under the circumstances. The Trustee believes that the proposed Procedures will ease the Court's administration of over 200 adversary proceedings, create the framework for a uniform and expeditious resolution of common issues of law and fact, and significantly reduce the economic burdens of pursuing the Adversary Proceedings on the Petters Estates and parties in interest. The relief requested in this Motion is consistent with relief afforded by the courts in cases where the volume of adversary proceedings justify the development of a streamlined and relatively uniform approach for

prosecuting and administering multiple actions. *See, e.g., Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities, LLC (In re Madoff)*, ADV No. 08-01789 (Bankr. S.D.N.Y. November 10, 2010); *In re Enron Corp.*, Case No. 01-16034 (Bankr. S.D.N.Y. 2003 Sept. 11, 2003).

27. Counsel for the Trustee has consulted extensively with the Creditors' Committee with respect to the relief requested in this Motion and believes that the Creditors' Committee supports the relief requested and views it as appropriate under the circumstances and in the best interests of the bankruptcy estates. Counsel for the Trustee has also generally discussed the proposed procedures and a coordinated process for identifying and addressing common issues of law and fact with counsel for several defendants in the Pending Adversary Proceedings prior to the date hereof. The Procedures also contemplate a process for further communication among counsel for the Trustee and various defendants on matters impacting the administration of multiple Adversary Proceedings.

GENERAL

28. The Trustee reserves the right to file a supplemental memorandum of law or response in reply to objections, if any, that may be interposed with respect to the relief requested in this Motion.

WHEREFORE, the Trustee believes that the proposed Procedures and other relief requested in this Motion are integral to the ability to resolve the Adversary Proceedings in a cost-effective, efficient manner that will further speedy distribution to creditors. In light of the foregoing, the Trustee respectfully requests that this Court enter an order authorizing and approving the Procedures, and granting such other or further relief the Court deems just and equitable.

DATED: December 10, 2010

LINDQUIST & VENNUM P.L.L.P.

By: /e/ George H. Singer
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**ATTORNEYS FOR
DOUGLAS A. KELLEY,
CHAPTER 11 TRUSTEE OF
PETTERS COMPANY, INC., ET AL.**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Jointly Administered under
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

(includes:

Petters Group Worldwide, LLC;

PC Funding, LLC;

Thousand Lakes, LLC;

SPF Funding, LLC;

PL Ltd., Inc.;

Edge One LLC;

MGC Finance, Inc.;

PAC Funding, LLC;

Palm Beach Finance Holdings, Inc.)

Court Files Nos.:

08-45258 (GFK)

08-45326 (GFK)

08-45327 (GFK)

08-45328 (GFK)

08-45329 (GFK)

08-45330 (GFK)

08-45331 (GFK)

08-45371 (GFK)

08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN ORDER
AUTHORIZING AND APPROVING CASE MANAGEMENT PROCEDURES
GOVERNING MULTIPLE ADVERSARY PROCEEDINGS
ARISING UNDER 11 U.S.C. §§ 105, 502, 506, 510, 542, 544, 547, 548 AND 550**

Douglas A. Kelly, the duly-appointed Chapter 11 Trustee (the “Trustee”) of the above-captioned debtors (the “Debtors”) by and through his legal counsel, respectfully submits this Memorandum of Law in support of his Motion for an Order Authorizing and Approving Case Management Procedures Governing Multiple Adversary Proceedings Arising Under 11 U.S.C. §§ 105, 502, 506, 510, 542, 544, 547, 548 and 550 (the “Procedures Motion”). Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Procedures Motion unless the context requires otherwise.

FACTS

The relevant factual background and basis for this Memorandum is set forth in the Procedures Motion and is incorporated as though fully set forth herein.

ARGUMENT

I. Basis for Relief Requested

A. Authority of the Court to Implement the Procedures

The Court has broad discretion to adopt and implement guidelines, such as the Procedures and other relief proposed in the Procedures Motion, which will aid in the administration of the Adversary Proceedings. Specifically, § 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to take such actions and implement such procedures as are necessary to enforce the provisions of the Bankruptcy Code. That section provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude this court from *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105. Section 105 therefore recognizes the bankruptcy court's "inherent powers" to manage the cases on their docket by providing "the necessary authority to manage arguments and conduct of parties to ensure judicial efficiency and to do justice." *Johnson v. McDow (In re Johnson)*, 236 B.R. 510, 521 (D.D.C. 1999) (citing *Roadway Express v. Piper*, 447 U.S. 752, 765, 767 n.14 (1980)). *Accord In re Miller*, 16 F.3d 240, 244 (8th Cir. 1994); *Finstrom v. Huisinga*, 101 B.R. 997, 998 (D. Minn. 1989); *In re Sunflower Racing, Inc.*, 218 B.R. 972, 977 (D. Kan. 1998); *Western Cities Broadcasting, Inc. v. Schueller (In re Schueller)*, 126 B.R. 354, 359 (D. Colo. 1991). Toward that end, the bankruptcy court has the authority to review the circumstances of the case and establish such rules, processes and time schedules as may be

necessary to ensure that the litigation is “fair, fast, effective, and efficient.” *In re Aspen Limousine Serv., Inc.*, *aff’d*, 193 B.R. 325 (D. Colo. 1996). In addition, Rule 7016 of the Federal Rules of Bankruptcy Procedure affords courts significant flexibility in case management and scheduling. Specifically, Rule 7016(a) authorizes the Court to enter orders for the purpose of:

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating the settlement of the case.

Fed. R. Bankr. P. 7016(a). Rule 7016(b) authorizes courts to enter scheduling and other orders that limit the time to file motions and to complete discovery, establish dates for conferences and trials and “any other matters appropriate in the circumstances of the case.” Fed. R. Bankr. P. 7016(b).

B. Benefit to the Bankruptcy Estates and Parties in Interest

The Proposed Procedures, which the Trustee has developed in concert with the Creditors’ Committee, further the purpose of the applicable Bankruptcy Rules by establishing certain initial guidelines that the Trustee believes are essential to the efficient administration and successful resolution of the Adversary Proceedings. The Trustee submits that implementation of the Procedures and orders issued in furtherance thereof will further the cost-effective, timely resolution of the Adversary Proceedings for the benefit of creditors, the defendants in the Adversary Proceedings and all parties in interest. The Trustee further submits that the Procedures will also further the goals of judicial economy and conservation of judicial resources. Absent the establishment of the Procedures to govern the prosecution of the Adversary Proceedings, it will be challenging for the Trustee to prosecute the Adversary Proceedings in an efficient and timely manner and equally difficult for the Court to administer these matters. To

the extent that the Procedures deviate from otherwise applicable rules and practice, the Trustee submits that such variations are necessary in light of the large number of Pending Adversary Proceedings that are currently before this Court.

Accordingly, by this Procedures Motion, the Trustee requests entry of an order modifying certain procedures governing the Adversary Proceedings, including, among other things, summons issuance, response dates, calendaring, mediation, discovery and certain motion practices. Due to the large number of defendants against whom the Trustee has and may commence the Adversary Proceedings, the Trustee submits that some of the informal and formal local practices should be modified to ease the paper and logistical burdens on the Court and all parties in interest. The Proposed Procedures provide a more systematic, structured and efficient means for managing the case load and establish a framework for expediting the identification and resolution of common questions of law and fact.

II. General Discussion of Relief Requested

A. Extension of Bankruptcy Rule 7004(m) Period

The Trustee and his counsel believe that it is necessary and appropriate to extend the 120-day time period provided for in Rule 7004(m) of the Federal Rules of Bankruptcy Procedure by 120 days. Rule 4(m) of the Federal Rules of Civil Procedure, made applicable by Rule 7004 of the Federal Rules of Bankruptcy Procedure, allows a plaintiff 120 days from the filing of a complaint to serve a summons. Fed. R. Bankr. P. 7004(m). In the event that a defendant is not served within the 120-day period, the court “on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant *or order that service be made within a specified time*. But if the plaintiff shows good cause for the failure, the court *must* extend the time for service for an appropriate period.” *Id.* (emphasis added). Thus, where good cause is shown, Rule 7004(m) requires the Court to extend the 120-day period for service

of process. Even where good cause is not shown, the Rule permits the Court in the exercise of its discretion to extend the time for service. *Mejia v. Castle Hotel, Inc.*, 164 F.R.D. 343 (S.D.N.Y. 1996) (interpreting Rule 4(m) of the Federal Rules of Civil Procedure); *In re Ames Dep't Stores, Inc.*, No. 01-42217 (REG) (S.D.N.Y. Feb. 3, 2004 Order Extending Service Period); *In re Enron Corp.*, No. 01-16034 (AJG) (S.D.N.Y. April 28, 2004).

In addition, Rule 9006(b)(1) provides for the enlargement of time to perform acts required under the Federal Rules of Bankruptcy Procedure:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by notice given thereunder or by order of the court, the court for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order

Fed. R. Bankr. P. 9006(1).

The extension of the service period will substantially aid in the efficient administration of the Adversary Proceedings. The benefits of the additional 120 days to the Trustee are apparent: (a) valuable claims in favor the bankruptcy estates will be preserved; (b) the Trustee will have additional time to identify the correct identity of additional initial transferees and subsequent transferees and join them to the Pending Adversary Proceedings to the extent appropriate; (c) the Trustee will have additional time to effectuate service on the approximate 25 defendants named in the Pending Adversary Proceedings that do not reside in the United States¹; (d) the Adversary Proceedings can proceed in a more efficient and organized fashion; and (e) costs and judicial resources can be conserved. The Trustee therefore submits that the foregoing benefits constitute good cause under Rule 7004(m). Were the Court to find that good cause has not been shown, the

¹ Although Rule 7004(m) and the 120-day limit for service “does not apply to service in a foreign country . . . ,” courts have recognized the appropriateness of extending time to complete service on foreign defendants. *See, e.g., In re Copper Antitrust Litig.*, No MDL 1301, 02-C-0707-C, 2003 23200370, at *1 (W.D. Wis. May 30, 2003); *Kim v. Frank Mohn A/S*, 909 F. Supp. 474, 480 (S.D. Tex. 1995).

Trustee submits that the Court should exercise its discretion to grant the requested extension of time under the circumstances.

B. Answer Deadline and Extensions

Pursuant to the Court's Scheduling Order dated September 22, 2010, the Court established a deadline of January 28, 2011 for defendants in the Pending Adversary Proceedings to file formal answers to the complaints, subject to further extension on stipulation or on grant by the Court on formal motion. The Trustee requests that the Court grant the parties express authority to enter into informal, written extension agreements or stipulations to extend the time to respond to adversary complaints without the necessity of filing those agreements with the Court. The Trustee believes that this will eliminate the requirement of judicial involvement in connection with requests for extensions of time, particularly in connection with future Adversary Proceedings or in connection with Pending Adversary Proceedings for which service of process remains outstanding and logistical issues may warrant an extension (i.e. foreign defendants).

C. Mediation Procedures

The Trustee is willing to resolve as many Adversary Proceedings as possible without proceeding to full or extensive litigation. Indeed, the Trustee expects that many actions can be ultimately settled or resolved without the necessity of a trial on the merits. The Trustee is also prepared to consider mitigating circumstances and the financial situation of particular defendants that provide necessary information to enable the Trustee to make determinations with respect to the actions.² The Procedures contemplate mandatory mediation for all Adversary Proceedings in which the Trustee seeks an aggregate monetary recovery of \$1,000,000 or less³ and in Adversary

² See Financial Disclosure Form, attached to the Procedures Motion as Exhibit C.

³ See Listing of Pending Adversary Proceedings, attached to the Procedures Motion as Exhibit A for proceedings identified by the Trustee for mediation and falling within the established financial threshold.

Proceedings in which the parties agree in writing to submit to mediation.⁴ Particularly in light of the amounts in controversy in connection with certain Adversary Proceedings, the Trustee believes that the proposed Procedures with respect to mediation will ease the burden on the Court, the parties and counsel and serve to facilitate and maximize the potential for a fair resolution of the Trustee's claims in certain instances without the need for trial.

D. Motions to Dismiss

The Trustee anticipates that the Motions to Dismiss and answers to the complaints will frame issues and likely implicate certain common questions of law or fact in multiple Adversary Proceedings. The Procedures therefore establish deadlines for bringing all motions to dismiss and establish a process for scheduling a prompt hearing on such motions and the Trustee's responses thereto and expediting the coordination of proceedings and issues.

E. Coordination and Consolidation of Common Issues of Law and Fact

The Trustee intends to request that the Court consolidate various matters and proceedings for prompt hearing and presentation for decision in the Adversary Proceedings on common questions of law and fact pursuant to Rule 7042 of the Federal Rules of Bankruptcy Procedure. *See* Fed. R. Bankr. P. 7042. Accordingly, the Trustee intends to file a Consolidation Motion on or before March 2, 2011 after it has considered the answers to the complaint and motions to dismiss that have been filed, all of which are generally due on or before January 28, 2011. In connection with the Consolidation Motion, the Trustee intends to seek an expedited discovery schedule on certain matters and request the entry of additional orders to avoid duplication and make the litigation of the Adversary Proceedings and common questions of law and fact more

⁴ Subject to the terms and timing specified in the Procedures Order, defendants in the Mediation Cases may elect to proceed with private mediation and obtain the services of a private mediator acceptable to the Trustee. *See* Private Mediator List that will be submitted in connection with the Procedures Motion as Exhibit B and filed in advance of the scheduled hearing thereon.

efficient. The Trustee has already engaged in discussions with certain parties regarding aspects of the Procedures Motion and the Procedures contemplate a process for discussions with counsel interested in participating in good faith in discussions with the Trustee regarding the coordination of various common matters.

F. Discovery Matters

The Trustee intends to propose additional, coordinated procedures and protocols relating to discovery and other matters in connection with the Consolidation Motion, including the expedited discovery of certain issues relating to common questions of law and fact, after the Trustee and his legal counsel have considered the pleadings filed by the defendants on January 28, 2011 (i.e. the answers to the complaints and the Motions to Dismiss). In order to promote uniformity, ensure efficiencies and avoid dilatory tactics in the litigation process at this stage of the proceedings, the Procedures stay the conduct of all discovery pending further order of the Court anticipated in connection with the Coordination Motion (other than discovery by the Trustee that is necessary or desirable to effectuate service of process on any defendant which shall not be stayed and allowed to proceed immediately).

G. Omnibus Pretrial Hearings

The Procedures establish Omnibus Pretrial Hearings and dates for hearings on all non-dispositive matters and motions to request the approval of a settlement agreement. The Trustee believes that the establishment of omnibus hearings for certain matters will reduce the number of hearing dates, will reduce the burden on the court of administering over 200 Adversary Proceedings and alert parties well in advance of those hearing dates for planning purposes.

H. Default Judgments

The Procedures establish stream-lined procedures for the entry of default judgments against defendants who have not answered the complaints in the Adversary Proceedings. The

process set forth in and contemplated by the Procedures will reduce costs by permitting the Trustee to file an application as opposed to a motion and eliminate the necessity of filing a memorandum of law. The Trustee will, under the proposed Procedures, provide defendants with additional notice before the entry of default judgment and, if the defendant fails to respond, permit the Court to grant the relief demanded in the complaint and the application without further notice and hearing. All hearings on default applications will be heard at the Omnibus Pretrial Hearings.

I. Pre-Trial Jurisdictional Matters

The Procedures make clear that this Court shall retain the jurisdiction and the authority to preside over *all* Adversary Proceedings and to adjudicate all pre-trial matters, including the presentation of and decisions on all dispositive motions—even in Adversary Proceedings in which a particular defendant may have a right to a trial by jury on some or all issues. This Court’s retention of such matters is consistent with the contemplation of the United States District Court in addressing issues in various proceedings and consistent with the Court’s previous rulings and decisions in these bankruptcy cases and other proceedings. *See, e.g., Kelly v. Hover et al. (In re Petters Company, Inc.)*, ADV No. 10-04221 (November 15, 2010) (rulings on the record; order forthcoming) (Kishel, J.); *Hedback v. American Family Mut. Ins. Co. (In re Mathews)*, 203 B.R. 152 (Bankr. D. Minn. 1996) (Kishel, J.).

CONCLUSION

The Trustee believes that the implementation of the Procedures will further the cost-effective, efficient resolution of the Adversary Proceedings for the benefit of the bankruptcy estates and all parties in interest and increase the likelihood of a speedy distribution to creditors. The Trustee also believes that the Procedures will further the goals of judicial economy and the

conservation of judicial resources and is well within the authority granted to the Court under 11 U.S.C. § 105 and the applicable Federal Rules of Bankruptcy Procedure.

DATED: December 10, 2010

LINDQUIST & VENNUM P.L.L.P.

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**ATTORNEYS FOR
DOUGLAS A. KELLEY,
CHAPTER 11 TRUSTEE OF
PETTERS COMPANY, INC., ET AL.**

Exhibit A

**(Pending Adversary
Proceedings)**

Adversary Proceedings Filed in *In re Petters Company, Inc., et al.* Bky No. 08-45257

<u>Case Name</u>	<u>Adversary Number</u>	<u>Demand Amount</u>	<u>Mediation Case</u>
Acorn Capital Group, LLC	10-04441	Settlement Pending	
Actionwear International S.L. et al	10-04432	\$ 1,030,000.00	
After the Second Millennium (PCI)	10-04433	\$ 2,533,890.74	
After the Second Millennium (PGW)	10-04434	\$ 131,250.00	X
Allanson	10-04263	\$ 1,137,833.00	
Alper	10-04293	\$ 577,500.00	X
American Express	10-04435	\$ 460,821.13	X
Anderson	10-04344	\$ 59,500.00	X
Anding	10-04260	\$ 1,021,860.00	
Apriven Partners, LP	10-04413	\$ 232,726,145.00	
Ark Royal Capital, LLC	10-04325	\$ 1,200,000.00	
Aron	10-04205	\$ 56,015,852.00	
Aronovsky	10-04259	\$ 920,384.00	X
Associated Bank	10-04422	\$ 181,783,741.94	
Baer	10-04370	\$ 3,204,227.17	
Baratz, et al.	10-04420	\$ 7,436,285.00	
Beresford Bancorporation, Inc.	10-04447	\$ 1,057,254.18	
Big Brothers Big Sisters of Gr. TC	10-04323	\$ 204,000.00	X
B'nai B'rith International	10-04326	\$ 44,950.00	X
Boland, et al.	10-04436	\$ 293,501.00	X
Boosalis (Alex)	10-04248	\$ 571,750.00	X
Boosalis (Gus)	10-04247	\$ 7,677,351.00	
Boosalis (John)	10-04246	\$ 1,860,500.00	
Boosalis (William)	10-04245	\$ 5,949,500.00	
Boosalis Family Limited Partnership	10-04390	\$ 4,961,800.00	
Braun	10-04222	\$ 6,513,293.00	
Brax Capital Group	10-04430	\$ 750,000.00	X
Brennan	10-04264	\$ 969,403.00	X
Bushey	10-04394	\$ 40,000.00	X
Calibrax Capital Partners, et al.	10-04426	\$ 8,000,000.00	
Carlstrom, et al.	10-04213	\$ 2,880,222.00	
Carter	10-04337	\$ 1,742,229.07	
Caruso	10-04274	\$ 62,117.00	X
Cercle Sportif Fola Esch	10-04414	\$ 200,000.00	X
Challenge Printing	10-04290	\$ 1,139,262.00	
Charap	10-04229	\$ 1,835,024.00	
Chee-Awai	10-04398	\$ 1,750,000.00	
Children's Heartlink	10-04319	\$ 7,500.00	X
Chin, et al.	10-04258	\$ 809,917.00	X
Cholakakis	10-04379	\$ 1,059,663.00	
Christenson, et al.	10-04288	\$ 191,708.00	X
Chuck and Harold's	10-04438	\$ 2,100,000.00	
Circle F Ventures, LLC	10-04355	\$ 13,922,635.00	
Clayton	10-04405	\$ 60,000.00	X
Cohen Partnership et al	10-04431	\$ 1,769,899.38	
Colvin (Kenneth/Thelma), et al.	10-04266	\$ 719,718.00	X
Colvin, Larry, et al.	10-04310	\$ 673,399.00	X
Colving, Kimberlee et al.	10-04311	\$ 36,511.00	X
Crohn's & Colitis Foundation of Am	10-04317	\$ 10,000.00	X
Crown Bank	10-04429	\$ 6,111,715.34	
Cunningham et al.	10-04442	\$ 3,317,114.00	

Adversary Proceedings Filed in *In re Petters Company, Inc., et al.* Bky No. 08-45257

<u>Case Name</u>	<u>Adversary Number</u>	<u>Demand Amount</u>	<u>Mediation Case</u>
Dallman	10-04356	\$ 616,070.00	X
Danko	10-04339	\$ 1,925,000.00	
Deikel (PCI)	10-04351	Settlement Pending	
Deikel (PGW)	10-04335	Settlement Pending	
Dennis, et al.	10-04208	\$ 12,001,190.00	
Diment	10-04249	\$ 1,089,375.00	
Dorsey	10-04360	\$ 18,500.00	X
Dovolis	10-04223	\$ 2,430,640.00	
Dunlap	10-04410	\$ 3,853,179.50	
Edgebrook, Inc.	10-04204	\$ 5,881,200.00	
Electric Motor Supply Co.	10-04267	\$ 107,450.00	X
Engels	10-04338	\$ 601,688.00	X
Evans Charap	10-04228	\$ 167,337.00	X
Faraone, et al.	10-04287	\$ 2,381,310.00	
Farrar	10-04377	\$ 10,804,535.00	
Feneis (Dan and Patricia)	10-04275	\$ 675,703.00	X
Feneis (Steve)	10-04268	\$ 94,923.00	X
Fidelis Foundation	10-04286	\$ 406,922,647.00	
Fleming (Hayden), et al.	10-04255	\$ 1,541,280.00	
Fleming (Patrick), et al.	10-04257	\$ 279,153.00	X
Garden State Securities	10-04412	\$ 300,000.00	X
Gelb	10-04261	\$ 654,000.00	X
General Electric Capital Corp	10-04418	\$ 293,525,228.00	
Hagan	10-04207	\$ 3,714,000.00	
Hamm	10-04373	\$ 2,300,000.00	
Hardy	10-04408	\$ 530,741.00	X
Harmer	10-04372	\$ 1,284,811.39	
Hauser	10-04254	\$ 8,444,252.00	
Hay	10-04399	\$ 4,938,987.74	
Hayes	10-04269	\$ 811,258.00	X
High Plains Investment LLC	10-04250	\$ 3,341,210.00	
Hillesland	10-04253	\$ 601,230.00	X
Hoag, et al.	10-04291	Dismissed	
Hodge	10-04425	\$ 165,554.00	X
Hofer	10-04221	\$ 36,278,748.00	
Holzem	10-04392	\$ 10,000.00	X
Home Federal and Vlahos	10-04416	\$ 3,998,716.53	
Home Federal Savings Bank	10-04439	\$ 152,500.00	X
Honig	10-04362	\$ 32,500.00	X
Hopfenspriger	10-04270	\$ 56,250.00	X
Idlewild Properties, LLC	10-04380	\$ 824,625.00	X
Insight Partners	10-04411	\$ 333,333.34	X
Isaac (George), et al.	10-04210	\$ 4,862,584.00	
Isaac (Lynn), et al.	10-04209	\$ 16,781,361.00	
Jay Salmen	10-04341	\$ 350,000.00	X
Jeffries	10-04400	\$ 3,200,000.00	
Jerry	10-04406	\$ 105,846.08	X
Joe	10-04358	\$ 62,000.00	X
Johnson (Brian/Mary Joseph)	10-04271	\$ 501,599.00	X
Johnson (Larry)	10-04381	\$ 65,000.00	X
Jordan, John	10-04376	\$ 165,228.64	X

Adversary Proceedings Filed in *In re Petters Company, Inc., et al.* Bky No. 08-45257

	<u>Case Name</u>	<u>Adversary Number</u>	<u>Demand Amount</u>	<u>Mediation Case</u>
103	Joseph (Anna)	10-04272	\$ 307,292.00	X
104	JPMorgan Chase & Co.	10-04446	\$ 300,000.00	
105	JPMorgan Chase & Co.	10-04443	\$ 241,000,000.00	
106	Kabe	10-04273	\$ 534,233.00	X
107	Kanios, et al.	10-04206	\$ 1,262,500.00	
108	Kastor	10-04276	\$ 74,625.00	X
109	Kenneth Johnson	10-04423	\$ 2,087,467.00	
110	Kenney	10-04225	\$ 595,256.00	X
111	Kerbel, et al.	10-04284	\$ 240,208.00	X
112	Klassen	10-04369	\$ 75,625.00	X
113	Knoblach	10-04382	\$ 35,772,989.00	
114	Kruse	10-04371	\$ 25,500.00	X
115	Kubinski et al	10-04387	\$ 221,900.00	X
116	Kuperus	10-04277	\$ 76,250.00	X
117	Kyriakides	10-04278	\$ 149,175.00	X
118	Lac Courte Oreilles Band of Lake Superior Chippewa	10-04388	\$ 1,678,355.00	
119	Lagermeier	10-04403	\$ 10,000.00	X
120	Lancer, et al.	10-04427	\$ 217,264,330.07	
121	Larsen Agribusiness, Inc.	10-04283	\$ 324,016.00	X
122	Laumann	10-04374	\$ 308,543.80	X
123	Lewicki	10-04252	\$ 278,873.00	X
124	Lindstrom	10-04368	\$ 145,000.00	X
125	M&I Marshall and Ilsley Bank	10-04397	\$ 3,717,836.99	
126	Make-a-Wish Foundation of MN	10-04320	\$ 11,728.75	X
127	Mansour, et al.	10-04296	\$ 3,010,000.00	
128	Margolin	10-04428	Dismissed	
129	Margolis	10-04348	\$ 91,920.47	X
130	Mau	10-04347	\$ 101,459.00	X
131	McCarthy, et al.	10-04262	\$ 5,282,000.00	
132	McGaunn	10-04340	\$ 300,000.00	X
133	McGough	10-04226	\$ 1,150,000.00	
134	McKinney	10-04365	\$ 60,000.00	X
135	Menczynski	10-04336	\$ 1,068,509.25	
136	Metro Gem, Inc., et al. (Vennes)	10-04352	\$ 2,348,317,475.39	
137	Metro I, LLC, et al. (Arrowhead)	10-04328	\$ 5,185,791,217.70	
138	Meyer	10-04417	\$ 76,572.15	X
139	Mignin	10-04294	\$ 505,768.00	X
140	Millennium Development, LLC	10-04383	\$ 121,645.00	X
141	Miller	10-04343	\$ 199,729.09	X
142	Miller Companies, Inc.	10-04282	\$ 278,000.00	X
143	Miller, et al.	10-04256	\$ 2,180,000.00	
144	Minneapolis Jewish Foundation	10-04313	\$ 11,500.00	X
145	Minnesota Public Radio	10-04314	\$ 3,500.00	X
146	Monighan	10-04395	\$ 30,000.00	X
147	Morgan	10-04415	\$ 60,000.00	X
148	Musich, et al.	10-04224	\$ 1,760,244.00	
149	Nelson (Jerry)	10-04384	\$ 327,000.00	X
150	North Central Food Systems, Inc.	10-04389	\$ 2,497,000.00	
151	O'Brien	10-04361	\$ 22,500.00	X
152	Olson, et al.	10-04297	\$ 362,000.00	X
153	Opportunity Finance (Fingerhut)	10-04375	\$ 21,600,000.00	

Adversary Proceedings Filed in *In re Petters Company, Inc., et al.* Bky No. 08-45257

	<u>Case Name</u>	<u>Adversary Number</u>	<u>Demand Amount</u>	<u>Mediation Case</u>
154	Opportunity Finance (Sabes)	10-04301	\$ 2,524,051,803.72	
155	O'Shaughnessy	10-04401	\$ 7,270,004.50	
156	Overstock.com	10-04292	\$ 2,547,406.00	
157	Palma	10-04393	\$ 1,025,723.96	
158	Papadimos	10-04211	\$ 5,790,869.00	
159	Pernula	10-04366	\$ 180,000.00	X
160	Phelps	10-04342	\$ 821,183.00	X
161	Potts, et al.	10-04437	\$ 778,941.88	X
162	Ratliff	10-04409	\$ 1,995,500.00	
163	Redstone American Grill, Inc.	10-04203	\$ 5,446,100.00	
164	Redstone Limited Partnership	10-04202	\$ 600,167.00	X
165	Riedl	10-04346	\$ 100,127.00	X
166	Ritchie Capital Management, L.L.C., et al.	10-04440	\$ 21,584,308.81	
167	Romano	10-04227	\$ 809,699.00	X
168	Romenesko	10-04419	\$ 2,126,569.68	
169	Ruggieri, et al.	10-04279	\$ 484,030.00	X
170	Sarenpa	10-04363	\$ 40,758.00	X
171	Scherber	10-04295	\$ 387,050.00	X
172	Schmit	10-04367	\$ 178,125.00	X
173	Schopper	10-04391	\$ 739,860.00	X
174	Seminole Tribe of Florida, Inc.	10-04386	Dismissed	
175	Signature Bank	10-04421	\$ 153,791.00	X
176	Slobodyanuk (Jane)	10-04280	\$ 174,639.00	X
177	Slobodyanuk (Slava)	10-04281	\$ 114,614.00	X
178	Southwest Aviation, et al.	10-04424	\$ 580,142.00	X
179	St. Cloud American Legion	10-04316	\$ 15,000.00	X
180	St. Jude Children's Research Hosp	10-04312	\$ 15,000.00	X
181	Svigos	10-04212	\$ 7,380,417.00	
182	SXD Corporation	10-04289	\$ 714,755.00	X
183	Taunton (Paul), et al.	10-04215	\$ 29,793,188.00	
184	Taunton (Peter), et al.	10-04214	\$ 1,276,500.00	
185	Tesar	10-04359	\$ 54,643.00	X
186	The Breast Cancer Reesearch Fdn	10-04315	\$ 60,000.00	X
187	The Retreat	10-04357	\$ 20,000.00	X
188	Thomas Shimoji and Company, Ltd.	10-04354	\$ 140,000.00	X
189	Timmer, et al.	10-04265	\$ 5,242,081.00	
190	Ting	10-04345	\$ 67,600.00	X
191	Salmen, Tom	10-04364	\$ 78,750.00	X
192	Toshi Investments, Ltd.	10-04378	\$ 640,000.00	X
194	Traub	10-04404	\$ 1,658,333.39	
195	Trent Tucker Non-Profit Org	10-04322	\$ 25,000.00	X
196	Urban Ventures Leadership Fdn	10-04324	\$ 11,000.00	X
197	Vlahos, et al.	10-04201	\$ 39,493,900.00	
198	Volunteers of America in MN	10-04321	\$ 57,500.00	X
199	Waara	10-04407	\$ 36,500.00	X
200	Westford Special Situations Master Fund (Epsilon/Stevanovich)	10-04396	\$ 3,203,439,988.09	
201	Wishes and More	10-04318	\$ 9,350.00	X
202	Wright	10-04385	\$ 363,775.00	X
203	Zhang	10-04402	\$ 38,000.00	X

Exhibit B

(Private Mediator List)

(Forthcoming)

Exhibit C

(Financial Disclosure Form)

A. PERSONAL INFORMATION

1. Name (Last, First, Middle) (include maiden name if applicable)			2. Social Security Number	
3. Street Address		4. City	5. State	6. Zip Code
7. Date of Birth (MM/DD/YY)	8. If married, Spouse's Full Name & Date	8a. If divorced, Ex-spouse's Full Name & Date		9. Home Telephone Number ()
10. Employer or Business Name				11. Work Telephone Number ()
12. Minor children, dependents, and members of household				
Full Name (Last, First, Middle)		Relationship	Social Security Number	Date of Birth (MM/DD/YY)

Scope of Information Requested: Requests for information about you include a request for the same information about your spouse (unless you are legally separated and living apart), minor children, and any other dependents. Use the attached schedule if additional space is needed for any information requested.

B. INCOME/PAYMENTS RECEIVED

List all income or other payments received from any source in the last 6 years by you, or by any other person or entity if you have or had any right, power, or authority to control or enjoy the use of the money or property received by such other person or entity.

Type	2010	2009	2008	2007	2006	2005	Source(s)
1. Salary/Wages							
2. Commissions, Advances, Bonuses, & Benefits							
3. Severance Pay							
4. Dividends							
5. Interest							
6. Distributions of Capital							
7. Annuities, Pensions							
8. Rents/Royalties							
9. Sale of assets							
10. Repayment of loans							
11. Alimony/Child Support							
12. Gifts over \$1,000							
13. Other (itemize):							
TOTAL INCOME/RECEIPTS:							

C. EXPENSES/DISBURSEMENTS

List all your expenditures or other disbursements during the past 12 months including, but not limited to, the items below.

Type	Amount	Frequency/Date	Payee
1. Mortgage/Rent			
2. Food			
3. Utilities			
4. Payments on Loans			
5. Real Estate Taxes			
6. Insurance Premiums			
7. Medical Expenses			
8. Automobile Expenses			
9. Alimony/Child Support			
10. Income Taxes			
11. Other Expenses (itemize):			
TOTAL EXPENSES/DISBURSEMENTS:			

1. Identify the recipient and amount of all gifts made by you to any other persons or entities within the past 10 years.									
2010	2009	2008	2007	2006	2005	2004	2003	2002	2001
2. To the extent not included above, identify the recipient and amount all transfers of property of any type exceeding \$2,000 in value per transfer (or \$20,000 in total to a single recipient) made by you to any other persons or entities within the past 10 years for which less than fair value was received in exchange for the transfer.									
2010	2009	2008	2007	2006	2005	2004	2003	2002	2001
3. To the extent not included above, identify the recipient and amount all transfers of property of any type made by you to any relatives, family members (current or former, including any ex-spouses), friends, or significant others within the past 10 years.									
2010	2009	2008	2007	2006	2005	2004	2003	2002	2001

E. ASSETS

List all assets owned now or during the past 10 years by you, directly or indirectly, and all assets that are or were subject to your enjoyment or control, regardless of whether legal title or ownership is held in your name.		
Type	Current Balance/Value	Description (Account Holder, Location, etc.)
1. Checking Accounts		
2. Savings Accounts		
3. Certificates of Deposit		
4. Listed securities (stocks, bonds)		
5. Unlisted Securities		
6. Mutual funds		
7. Commodity accounts		
8. Trusts		
9. Insurance policies (cash value)		
10. IRA, Keogh, 401(k), Annuity, Pension or Deferred Compensation Plan accounts		
11. Inheritances		
12. Partnership Interests (non-securities)		
13. Net value of ownership interest in businesses		
14. Profit-sharing plans		
15. Motor vehicles (make/model, year, license):		
16. Business/farm equipment		
17. Inventory assets		
18. Accounts receivable/claims		
19. Household goods, furnishings, appliances, & personal effects		
20. Jewelry		
21. Coins or stamp collections, art, rugs, silver, antiques, & other valuables		
22. Electronic equipment		
23. Firearms/guns		
24. Recreational vehicles, boats, ATVs, etc.		
25. Tools, machinery		
26. Residential real estate (description, address):		
27. Commercial real estate (description, address):		

28. Patents	Case 08-45257 Doc 799 Filed 12/10/10 Entered 12/10/10 16:43:20 Desc Main
29. Trademarks	Document Page 40 of 73
30. Service marks	
31. Royalty agreements	
32. Licenses	
33. Other general intangibles	
34. Other assets not listed (itemize):	
TOTAL ASSETS:	

F. LIABILITIES

List all liabilities including, but not limited to, the items below.

Type	Amount Owed	Creditor	Description, terms, etc.
1. Mortgages/home equity lines of credit			
2. Auto loans			
3. Credit card debt			
4. Margin loans			
5. Insurance policy loans			
6. Installment loans			
7. Accrued real estate taxes			
8. Judgments/settlements owed			
9. Contingent liabilities (lawsuits pending)			
10. Tax liabilities (federal, state, local)			
11. Other loans, notes, or accounts payable:			
TOTAL LIABILITIES:			

G. DOCUMENTS TO ATTACH

1. Attach all federal tax returns filed by you (including personal, trust, partnership, or business returns) for the year of the first transfer identified in the Complaint as received by you and all subsequent years.
2. Attach all federal gift tax returns filed by you (including personal, trust, partnership, or business returns) for the year of the first transfer identified in the Complaint as received by you and all subsequent years.
3. Attach all certifications or statements of financial position made by you during the past 6 years regarding your investments and holdings including, but not limited to, Accredited Investor Certifications and Beneficial Ownership Reports (SEC Schedule 13D).
4. Attach all financial statements or applications prepared or completed by you during the past 6 years for any purpose (e.g., a financial statement provided to a bank to secure a loan).
5. Attach all financial statements for any entities owned by you, in whole or in part, prepared for the year of the first transfer identified in the Complaint as received by you and all subsequent years.
6. Attach current business valuation estimates for any entities in which you now hold an ownership interest.

H. DECLARATIONS AND SIGNATURE

I, _____, hereby declare under penalty of perjury that I have examined the information given in this statement and attached hereto and, to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I have no assets, owned either directly or indirectly, or income of any nature other than as shown in, or attached to, this statement. I understand that any material misstatements or omissions made by me herein, or in any attachments hereto, may constitute criminal violations punishable under 18 U.S.C. § 152 or other statutes.

The statements herein and attached hereto represent my financial condition as of _____ (date).

_____ (signature) _____ (date)

Sworn to me this ____ day of _____, 20____.

[Seal]

Notary Public

My commission expires on _____ (date)

Supplemental Schedule to Financial Disclosure Form

[illegible]

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Jointly Administered under
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

Court Files No.'s:

(includes:

Petters Group Worldwide, LLC;

08-45258 (GFK)

PC Funding, LLC;

08-45326 (GFK)

Thousand Lakes, LLC;

08-45327 (GFK)

SPF Funding, LLC;

08-45328 (GFK)

PL Ltd., Inc.;

08-45329 (GFK)

Edge One LLC;

08-45330 (GFK)

MGC Finance, Inc.;

08-45331 (GFK)

PAC Funding, LLC;

08-45371 (GFK)

Palm Beach Finance Holdings, Inc.)

08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

CERTIFICATE OF SERVICE

Gretchen Luessenheide, of the City of New Hope, County of Hennepin, State of Minnesota, states that on December 10, 2010 she served the following documents:

1. Notice of Hearing and Motion for an Order Authorizing and Approving Case Management Procedures Governing Multiple Adversary Proceedings Arising Under 11 U.S.C. §§ 105, 502, 506, 510, 542, 544, 547, 548 and 550;
2. Memorandum of Law in Support of Motion for an Order Authorizing and Approving Case Management Procedures Governing Multiple Adversary Proceedings Arising Under 11 U.S.C. §§ 105, 502, 506, 510, 542, 544, 547, 548 and 550
3. Proposed Order Authorizing and Approving Case Management Procedures Governing Multiple Adversary Proceedings Arising Under 11 U.S.C. §§ 105, 502, 506, 510, 542, 544, 547, 548 and 550

upon

Arrowhead Capital Management LLC c/o James N. Fry 601 Carlson Parkway, Suite 1250 Minnetonka, MN 55305	Rhone Holdings II, Ltd. c/o Thomas K. Cauley, Bryan Krakauer, Brian McAleenan Sidley Austin LLP 1 South Dearborn Chicago, IL 60603
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Huron Consulting Group, Inc. 4795 Paysphere Circle Chicago, IL 60674-4795	Greenwich Insurance Company c/o David M. Gische and Marcus B. Holladay Troutman Sanders LLP 401 9 th Street NW Washington, DC 20004-1234
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Putnam Green, LLC c/o Corporation Service Company (registered agent) 2711 Centerville Road, Suite 400 Wilmington, DE 19808	Putnam Green, LLC c/o Corporation Service Company (registered agent) 50 Weston Street Hartford, CT 06120
Stewardship Credit Arbitrage Fund, LLC c/o Corporation Service Company (registered agent) 2711 Centerville Road, Suite 400 Wilmington, DE 19808	Stewardship Credit Arbitrage Fund, LLC c/o Corporation Service Company (registered agent) 50 Weston Street Hartford, CT 06120
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Dan Aronovsky 108 Howard Dr Belvedere Tiburon, CA 94920-1448	
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Metro I, LLC c/o James N. Fry Arrowhead Capital Management 601 Carlson Parkway, Suite 1250 Minnetonka, MN 55305	Metro I, LLC c/o Bruce Recher Henson & Efron, PA 220 S 6th St, Suite 1800 Minneapolis, MN 55402
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Wendell Timmer Wendell Timmer IRA 4995 NE River Road Sauk Rapids, MN 56379-9303	Michael J. Ford Quinlivan & Hughes, P.A. Wells Fargo Center 400 South First Street, Suite 600 St. Cloud, MN 56301
Thomas E. Jamison Douglas L. Elsass Fruth, Jamison & Elsass 3902 IDS Center 80 South Eighth Street Minneapolis, MN 55402	True North Funding, LLC Ryan Relyea, Registered Agent 7659 S 700 W Midvale, UT 84047
Toshi Investments, Ltd Suite 1003-99 Wellington Crescent Winnipeg, Manitoba, Canada R3M 0A2	LANCER D. Truitt & Lorna Davis Charitable Trust D. Truitt Davis 4116 Concord Court Abilene, TX 79603
Dean and Michelle Vlahos 11544 W. Wayzata Blvd. Minnetonka, MN 55305	Michael Meyer Ravich Meyer Kirkman McGrath & Naumann 4545 IDS Center 80 South Eighth Street Minneapolis, MN 55402
David G. Hellmuth Hellmuth & Johnson PLLC 10400 Viking Drive, Suite 500 Eden Prairie, MN 55334	Nancy A. Wright 10633 Brunswick Way Bloomington, MN 55438-1806
Lancer Partners, Ltd. c/o Jack W. Young, Registered Agent 5001 Spring Valley Road, Suite 290W Dallas, TX 75244-8246	Jack W. Young 5909 Luther Lane, #900 Dallas, TX 75225

via U.S. Mail to the addresses listed above and electronically by Notice of Electronic Filing upon all parties who have requested service in these cases by filing the same via ECF with the Bankruptcy Court in the District of Minnesota.

/e/ Gretchen Luessenheide
Gretchen Luessenheide

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Jointly Administered under
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

(includes:

Petters Group Worldwide, LLC;

PC Funding, LLC;

Thousand Lakes, LLC;

SPF Funding, LLC;

PL Ltd., Inc.;

Edge One LLC;

MGC Finance, Inc.;

PAC Funding, LLC;

Palm Beach Finance Holdings, Inc.)

Court Files Nos.:

08-45258 (GFK)

08-45326 (GFK)

08-45327 (GFK)

08-45328 (GFK)

08-45329 (GFK)

08-45330 (GFK)

08-45331 (GFK)

08-45371 (GFK)

08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

**ORDER AUTHORIZING AND APPROVING
CASE MANAGEMENT PROCEDURES
GOVERNING MULTIPLE ADVERSARY PROCEEDINGS
ARISING UNDER 11 U.S.C. §§ 105, 502, 506, 510, 542, 544, 547, 548 AND 550**

The matter came on for hearing before the Court on January 18, 2011 on the Motion of Douglas A. Kelly, the duly-appointed Chapter 11 Trustee (the “Trustee”) of the above-captioned debtors (the “Debtors”) for an Order Authorizing and Approving Case Management Procedures Governing Multiple Adversary Proceedings Arising Under 11 U.S.C. §§ 105, 502, 506, 510, 542, 544, 547, 548 and 550 (the “Procedures Motion”). Appearances were as noted on the record. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Procedures Motion. The Court, having reviewed and considered the Procedures Motion and the objections delivered to the Court in connection with the hearing on the Procedures Motion, if any, and having determined that due, proper, timely adequate and sufficient notice and

opportunity to be heard with respect to the Procedures Motion and all of the relief requested therein has been afforded to interested parties and that no further notice be given, finds that relief requested in the Procedures Motion is necessary, appropriate and in the best interests of the Petters Estates, creditors and other interested parties. Based on the arguments of counsel, moving documents and the record made at the hearing, and the Court's findings of fact and conclusions of law, if any, having been recorded in open court following the close of evidence,

IT IS HEREBY FOUND, DETERMINED AND ORDERED THAT:

1. The relief requested in the Procedures Motion is GRANTED;
2. The Procedures governing all parties to the Adversary Proceedings identified on

Exhibit A to the Procedures Motion are as follows:

A. Applicability of the Procedures and the Procedures Order:

- (i) *General Applicability.* The Procedures and the Procedures Order shall apply to all of the Adversary Proceedings, except as otherwise provided herein.
- (ii) *Later-Served Defendants.* In the event that the Trustee serves a defendant in an Adversary Proceeding with a summons and a complaint less than fourteen (14) days prior to the hearing on the Motion seeking the entry of the Procedures Order or at any time after the entry of the Procedures Order (such defendant being referred to herein as the "Later-Served Defendant"), such Later-Served Defendant may object to being subject to the provisions of the Procedures by filing and serving a written objection within fourteen (14) days from the date the Procedures Motion or the Procedures Order, as the case may be, is served upon such Later-Served Defendant. Upon receipt of a timely objection, the Court shall hear such objection at a regularly scheduled Omnibus Hearing Date (as defined below) and determine whether and to what extent the Procedures Order shall apply to such defendant.

B. Extension of Rule 7004(m) Period:

- (i) *Extension of Service Deadlines for the Summons and Complaint.* The 120-day time period provided in Rule 7004(m) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for the Trustee to serve the summons and complaint in the Adversary Proceedings on all defendants is and shall be extended by 120 days. The extension is without

prejudice to the Trustee to seek further extensions of time for cause shown.

C. Answer Deadline and Extensions:

- (i) *Answer Deadline.* Pursuant to the Court's Scheduling Order dated September 22, 2010, unless otherwise extended as hereinafter provided, the defendants in the Pending Adversary Proceedings shall file an answer or other responsive pleading to the complaints filed by the Trustee in connection with the Pending Adversary Proceedings the later of (a) **January 28, 2011**, or (b) the answer date specified in the summons served on a particular defendant.
- (ii) *Extensions.* The Trustee shall have the authority to extend the time to file an answer to a complaint or other responsive pleading filed in connection with the Adversary Proceedings. The parties shall be permitted to enter into informal, written extension agreements or stipulations to extend the time to respond to the complaint in an Adversary Proceeding without the necessity of filing those agreements or stipulations with the Court.

D. Mediation:

- (i) *Thresholds.* All of the Adversary Proceedings in which (a) the Trustee seeks an aggregate monetary recovery of \$1,000,000 or less, or (b) the parties otherwise agree in writing to submit to mediation, shall be referred to mandatory mediation (collectively, the "Mediation Cases").
- (ii) *Location.* Since the Adversary Proceedings are proceedings before this Court, Minnesota is the proper forum for mediation.
- (iii) *Mediators.* The mediations shall be conducted by bankruptcy judges designated by the Court unless the defendant(s) in the Pending Adversary Proceeding (a) agree(s) to pay the fees and costs of a private mediator identified in accordance with this provision, and (b) by no later than **February 18, 2011**, notify(s) counsel for the Trustee in writing of its election to proceed with private mediation and identifies a private mediator from the list of proposed mediators submitted in connection with the Procedures Motion as Exhibit B (the "Private Mediator List"). By mutual agreement, the Trustee and the defendant may select a mediator not on the Private Mediator List.
- (iv) *Mediation Request Notice.* The Trustee shall file a "Notice of Mediation and Request for Referral" (the "Mediation Request Notice") in each Adversary Proceeding designated by the Trustee as a Mediation Case where the defendant does not elect to proceed with private mediation in accordance with the provisions of the previous paragraph of this Section D, requesting the Court to promptly refer the Mediation Case to another bankruptcy judge to serve as mediator; provided, however, that (a) the

Mediation Request Notice shall not be filed by the Trustee before **February 18, 2011**, and (b) unless the parties agree otherwise, the Mediation Request Notice shall not be filed by the Trustee with respect to a defendant in any Mediation Case where such defendant has brought a Motion to Dismiss (as defined below) until after the Court issues its ruling in connection with such motion.

- (v) *Scheduling.* The Trustee, working with the mediator's calendar clerk or office, will commence scheduling mediations based upon the availability of the mediator and the parties shall cooperate with each other regarding the scheduling of mediations.
- (vi) *Required Disclosures.* Within the later of sixty (60) days of (a) the filing of an answer or other responsive pleading to the complaint, or (b) the entry of the Procedures Order (the latter of such date being referred to herein as the "Required Disclosure Date"), the parties in the Mediation Cases shall, unless otherwise agreed, deliver to the other parties the following required disclosures (the "Required Disclosures"): (1) copies of all agreements by, between and/or among any of the Debtors and/or Thomas Petters and the defendant(s); (2) copies of all correspondence, including electronic communications, by, between and/or among the Debtors, Thomas J. Petters, and/or the Co-conspirators and the defendant(s); and (3) copies of all documents reflecting investment/loan payment information relating to the transfers and transactions that are the subject to the Adversary Proceeding, including bank statements, cancelled checks, wire information, tax returns, investment account statements, including any analyses of such investment/loan and payment information. In the case of any defendant asserting or intending to assert an inability to pay or satisfy a judgment, in whole or in part, or other particularized financial hardship in connection with his, her or its position in the Mediation, the Required Disclosures delivered by such party on the Required Disclosure Date shall also include a requirement to complete and provide the information set forth in the Financial Disclosure Form attached to the Procedures Motion as Exhibit C (the "Financial Disclosure Form"), the particularities of which Financial Disclosure Form the Trustee shall treat as confidential. The Trustee shall be authorized to enter into a confidentiality agreement with a defendant upon reasonable request in order to preserve the confidentiality of personal financial information set forth in the Financial Disclosure Form.
- (vii) *Participation in Mediation.* The parties to the Mediation Cases shall participate in mediation as scheduled and presided over by the mediator in good faith and with a view toward reaching a consensual resolution. Each mediation shall be attended in person by a representative for each of the parties with full settlement authority and, if a defendant is represented, their legal counsel, as well as counsel for the Trustee (who shall have settlement authority).

- (viii) *Mediator's Directives.* The mediator, in a separate order, notice or other communication that need not be filed, may require the parties to provide to the mediator any relevant papers and exhibits, a statement of position, and a settlement proposal. In the mediator's discretion, upon notice (which need not be filed), the mediator may adjourn a mediation. The mediator may also continue a mediation that has been commenced if the mediator determines that a continuation is in the best interests of the parties.
- (ix) *Failure to Comply.* Upon notice and a hearing, a party's failure to appear at the mediation or otherwise comply with the Procedures Order with respect to mediation in good faith, may result in the imposition by the Court of sanctions, which may include the entry of judgment in favor of the Trustee and the award of costs and attorneys' fees.
- (x) *Confidential Settlement Communications.* Pursuant to Federal Rule 408 of the Federal Rules of Evidence, all settlement discussions and communications by, between and among the parties in connection with the mediation shall be confidential and inadmissible.
- (xi) *Report on Mediation.* If an Adversary Proceeding settles or fails to settle at the conclusion of mediation, then the Trustee shall so advise the Court at the next regularly scheduled Omnibus Hearing.

E. Motions to Dismiss:

- (i) *Deadlines for Motions to Dismiss.* Any defendant in an Adversary Proceeding seeking to bring a motion to dismiss pursuant to Rule 7009 or 7012 of the Bankruptcy Rules or otherwise ("Motion to Dismiss") shall file such motion on or before the later of (a) **January 28, 2011**, or (b) the answer date specified in the summons served on a particular defendant.
- (ii) *Scheduling Hearing on and Responses to Motions to Dismiss.* No hearings shall be scheduled on any Motion to Dismiss pending further order of the Court issued in connection with Trustee's Consolidation Motion described in Section F below. The Court will set a date and time for hearing on the Motion to Dismiss in the Pending Adversary Proceedings at the next regularly scheduled Omnibus Pretrial Hearing on March __, 2011 and will address a briefing schedule with respect to responses to such motions, set additional deadlines and other matters relating to the Motions to Dismiss at such hearing.

F. Coordination and Consolidation of Common Issues of Law and Fact:

- (i) *Common Issues Coordination.* The Trustee intends to request that the Court consolidate various matters and proceedings for hearing and presentation for decision in the Adversary Proceedings on common questions of law or fact pursuant to Rule 7042 of the Bankruptcy Rules. In connection therewith, the Trustee intends to seek an expedited

discovery schedule on certain matters and request the entry of additional orders to make the litigation of the Adversary Proceedings more efficient and to avoid duplication, unnecessary costs and delay. Counsel for defendants interested in participating in the process of identifying common issues with counsel for the Trustee in connection with the Pending Adversary Proceedings shall communicate that desire to the undersigned counsel for the Trustee on or before **February 4, 2011** and in writing identify (a) their clients, and (b) issues of law and fact they believe to be appropriate to consolidate for hearing and any other matters appropriate for coordination. Counsel for the Trustee shall confer with defendants that have communicated an interest in the coordination of such issues in accordance with the foregoing and discuss common issues and procedures relating to consolidation.

- (ii) *Consolidation Motions.* On or before **March 2, 2011**, the Trustee shall file a motion with the Court seeking to consolidate for hearing and presentation for decision actions involving one or more common questions of law or fact pursuant to Rule 7042 of the Bankruptcy Rules (the "Consolidation Motion"). In connection therewith, the Trustee shall identify common questions for consolidation and propose an expedited discovery schedule(s) on appropriate matters, deadlines, the further coordination and scope of discovery in multiple Pending Adversary Proceedings, additional procedures, and other matters necessary or appropriate to the efficient and orderly administration of the consolidated actions or proceedings. The Court will hold a hearing on the Consolidation Motion at the next regularly scheduled Omnibus Pretrial Hearing on March __, 2011.
- (iii) *Consolidated Case Filings.* The Consolidation Motion and any responses thereto shall be filed in the main bankruptcy case (*In re Petters Company, Inc., et al.*, BKY Case No. 08-45257), and not in each separately docketed Adversary Proceeding, and shall be captioned accordingly.

G. Discovery Matters:

- (i) *Applicability of Rules.* The discovery provisions of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Minnesota Local Bankruptcy Rules (the "Local Rules") shall govern the discovery to be conducted in the Adversary Proceedings, unless otherwise provided herein or in further order of the Court.
- (ii) *Waiver of Certain Requirements.* The provisions of Rule 26(a)(1), 26(a)(2), 26(a)(3) and 26(f) of the Federal Rules of Civil Procedure, as made applicable to the Adversary Proceedings pursuant to Rule 7026 of the Bankruptcy Rules, shall not apply to the Adversary Proceedings.
- (iii) *Discovery.* Discovery on certain matters relating to common questions of law and fact shall be identified or proposed in connection with the

Consolidation Motion and addressed by the Court pursuant to separate order. Pending further order of the Court, the conduct of any and all discovery procedures in the Adversary Proceedings shall be stayed; provided, however, that the Trustee may immediately take any discovery that the Trustee deems necessary or desirable to effectuate service of process on any defendant to the Adversary Proceedings.

- (iv) *Documents in Criminal Proceedings.* The Trustee shall not, in connection with discovery in any Adversary Proceeding, be required to produce the transcripts of the criminal proceedings (or transcripts of hearings ancillary to such criminal proceedings) commenced by the United States against Thomas J. Petters, Deanna Coleman, Robert White, Larry Reynolds, Michael Catain, James Wehmhoff, Greg Bell, PCI and PGW or related documents and exhibits in connection with discovery requests issued by any party in connection with the Adversary Proceedings. Defendants and other parties are directed to the following resource in order to request a copy of those transcripts, documents and exhibits:

Carla R. Bebault, RPR, FCRR
146 Federal Building
316 North Robert Street
Saint Paul, Minnesota 55101
(651) 848-1220
carla_bebault@mnd.uscourts.gov

H. Omnibus Pretrial Hearings:

- (i) *Omnibus Pretrial Hearings.* All non-dispositive matters and motions to request the approval of a settlement agreement requiring a hearing in connection with the Adversary Proceedings prior to trial shall be heard by the Court only on scheduled Omnibus Pretrial Hearing Dates established by the Court from time to time (each hearing referred to as an “Omnibus Pretrial Hearing” and the scheduled date for such hearing referred to as the “Omnibus Pretrial Hearing Date”), unless otherwise set forth herein or the Court orders otherwise on a particularized showing of good cause. The initial Omnibus Pretrial Hearing Dates shall be held on at ___ a.m. on March __, 2011, April __, 2011, May __, 2011 and June __, 2011. Thereafter, the Omnibus Pretrial Hearings shall be scheduled approximately every thirty (30) days at the convenience of the Court. The Trustee shall file and serve notices of the scheduling of the Omnibus Pretrial Hearings in the Adversary Proceedings.
- (ii) *Appearances at Omnibus Pretrial Hearings.* Defendants in each of the Adversary Proceedings are not required to appear at the Omnibus Pretrial Hearings unless (a) such defendants have requested relief from the Court that will be heard at the scheduled Omnibus Pretrial Hearing; (b) the Trustee has requested relief against such defendants from the Court that will be heard at the scheduled Omnibus Pretrial Hearing and such

defendants intend to contest that relief; or (c) the Court has directed the defendant to appear.

I. Default Judgments:

- (i) *Applications for Default Judgments.* If a defendant in an Adversary Proceeding fails to timely interpose a response to the complaint by the deadline to answer or respond (and thus has defaulted), the Trustee shall be entitled to promptly seek the entry of default judgment by application pursuant to Local Rule 7055-1 served on the defaulting party on at least fourteen (14) days notice and final judgment shall be entered pursuant to Rule 7054 of the Bankruptcy Rules.
- (ii) *Certain Papers Not Required.* The Trustee need not file or serve a motion for default judgment and need not file or serve a memorandum of law.
- (iii) *Hearings on Defaults.* All hearings on the default applications shall be heard at the Omnibus Pretrial Hearings, except as otherwise provided herein.

J. Pre-Trial Jurisdictional Matters:

- (i) *Retention of Jurisdiction and Authority over Adversary Proceedings.* Consistent with this Court's rulings and pronouncements in *Kelley v. Hofer et al. (In re Petters Company, Inc.)*, ADV. No. 10-04221 (November 15, 2010) and *Hedback v. American Family Mut. Ins. Co. (In re Mathews)*, 203 B.R. 152 (Bankr. D. Minn. 1996), this Court shall retain the jurisdiction and the authority to preside over all Adversary Proceedings and to adjudicate all pre-trial matters, including the presentation of all dispositive motions and issuance of decisions on them.

K. Miscellaneous:

- (i) *Conflicts.* These Procedures shall control with respect to the Adversary Proceedings to the extent of any conflict with other applicable rules or orders entered prior to the date hereof.
- (ii) *Extensions of Deadlines.* The deadlines and other provisions contained in the Procedures Order may be extended or modified by the Court upon written motion and for good cause shown or consent of the parties pursuant to written agreement or stipulation, which agreement or stipulation need not be filed with the Court.
- (iii) *Notices of Appearance.* Consistent with the Scheduling Order entered by the Court on September 22, 2010, all attorneys retained by any defendant in an Adversary Proceeding in these bankruptcy cases shall file a notice of appearance on behalf of their client in the file for the Chapter 11 cases

and, if the attorney does not timely file an answer, in the file for the Adversary Proceeding as well.

- (iv) *Electronic Service.* Any motions, notices or other pleadings filed or served by the Trustee in the Adversary Proceedings (other than the summons and complaint) may be served by e-mail (unless the defendant is an individual and is not represented by legal counsel in which event service by e-mail shall not be effective unless such defendant has consented to service by e-mail). Service by e-mail shall be effective as of the date such e-mail is sent to the e-mail address furnished by the defendants in connection with the Adversary Proceedings or the bankruptcy cases to the Court or counsel for the Trustee.
- (v) *Relief from Procedures.* Nothing herein shall prevent the Trustee or any defendant in an Adversary Proceeding from seeking relief from the provisions of these Procedures, upon a showing of good cause, by appropriate motion to the Court in accordance with the procedures set forth herein.
- (vi) *Exchange of Documents and Information.* Nothing herein shall prevent the parties to any Adversary Proceeding from voluntarily exchanging information or engaging in settlement discussions at any time; provided, however, that any voluntary exchange of information shall in no way be construed as a waiver of any of the requirements or limitations contained in these Procedures.
- (vii) *Construction.* The Procedures set forth in the Procedures Order shall be construed by the parties in a manner that promotes the expeditious and economical resolution of the Adversary Proceedings and administration of these bankruptcy cases.
- (viii) *Service of Procedures Order.* The Trustee shall serve a copy of the Procedures Order approving these Procedures on each defendant in the Adversary Proceedings; provided, however, that the Trustee shall not be required to serve the Procedures Order on legal counsel for any parties that have filed a notice of appearance in these Chapter 11 bankruptcy cases or the Adversary Proceedings prior to the entry of the Procedures Order.

3. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge